

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Improving Outage Reporting for Submarine Cables)	GN Docket No. 15-206
And Enhanced Submarine Cable Outage Data)	

PETITION FOR RECONSIDERATION OF THE SUBMARINE CABLE COALITION

Andrew D. Lipman
Ulises R. Pin
Catherine Kuersten
Morgan, Lewis & Bockius LLP
2020 K Street, N.W.
Washington, DC 20006
Tel. (202) 373-6000
Fax (202) 373-6001
andrew.lipman@morganlewis.com
ulises.pin@morganlewis.com
catherine.kuersten@morganlewis.com

Counsel for the Submarine Cable Coalition

EXECUTIVE SUMMARY

The Coalition urges the Commission to reconsider several elements of its *Outage Order* promulgating new requirements for submarine cable outage reporting. The Commission implemented a definition of “outage” that is too broad, and not supported by the record in the rulemaking process. For one, the Commission implemented an arbitrary 30-minute standard for lack of connectivity that inevitably will capture a substantial amount of outages that are normally resolved quickly (*e.g.*, shunt faults), but now will require burdensome and costly reports even if service is not affected for prolonged periods of time.. Second, the Commission’s outage definition encompasses situations where traffic is rerouted and no disruption to communications occurs, as well as planned shutdowns where customers are already notified of an outage. The Commission’s expansive definition of outage will result in hundreds of additional reports that provide little, if any, useful information to the Commission.

The Commission also failed to complete a fulsome cost-benefit analysis and ensure its rules are the least burdensome means necessary for its goals, as required by Executive Order 13563 and the Paperwork Reduction Act. Specifically, the Commission has grossly underestimated the cost and burden to submarine cable operators for compliance with the *Outage Order*. These underestimations arise from, among other factors, using arbitrary or erroneous numbers when calculating the time and costs associated with compliance. Given the complexities in the submarine cable industry, operators would need to spend substantial time and money to file each of the three-part reports required by the *Outage Order*. The Coalition estimates that an operator will incur a minimum cost of \$1,500 for a single outage, not inclusive of upfront costs for implementation or legal counsel fees. In addition, the *Outage Order’s* broad definition of outage will add considerably to the FCC’s own workload and cause an increase in

costs that will eventually be passed on to submarine cable licensees in the form of higher regulatory fees.

Likewise, the Commission has failed to justify the public benefits accorded by the *Outage Order*, relying on a unique and isolated incident in the Commonwealth of the Northern Mariana Islands as evidence for the *Outage Order*'s necessity and disregarding industry input on safeguards already in place for genuine traffic disruption concerns. The act of reporting an outage to the Commission does nothing to further the public interest.

Finally, the Coalition urges the Commission to revisit the implementation period, designated currently as six months. As multiple industry participants have already noted, submarine cable operators need an implementation period of at least 12-15 months to understand, develop, and implement procedures in compliance with the *Outage Order*. Failure to adopt a longer transition period will inevitably result in a wave of extension petitions by operators who are legitimately unable to timely comply with the *Outage Order*.

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The Submarine Cable Coalition (“Coalition”), composed of Cedar Cable Ltd.; Columbus Networks USA, Inc.; GlobeNet Cabos Submarinos America, Inc.; GU Holdings Inc.; Hibernia Atlantic U.S. LLC; and Servizio di Telecomunicazione di Aruba N.V. (SETAR), well appreciates the necessity and complexity of protecting submarine cables and their users. However, the Coalition strongly believes that the Federal Communications Commission (“FCC” or “Commission”) erred on several critical points of the Report and Order (“*Outage Order*”) in the above-captioned docket¹ by not fully considering technical and financial arguments raised by industry commenters in the rulemaking proceeding and instead rushing to pass rules that have material adverse effects on submarine cable operators without a proper cost-benefit analysis. The Coalition herein identifies several areas that warrant reconsideration as a means to make outage reporting a more efficient and affordable process for submarine cable providers, while still promoting the reliability and security of undersea communications.

¹ *Improving Outage Reporting for Submarine Cables And Enhanced Submarine Cable Outage Data*, Report and Order, GN Docket No. 15-206 (rel. Jul. 12, 2016) (the “*Outage Order*”).

I. BACKGROUND

The Coalition members are a diverse group of submarine cable operators directly affected by the *Outage Order*. As multiple commenters noted in response to the Commission’s Notice of Proposed Rulemaking in this docket, submarine cables can be subject to damage by a variety of factors, including natural events and inadvertent human interference.² Submarine cable providers, including those in the Coalition, view the integrity of these cables as critical to their operations. Accordingly, they already take measures to repair damage adequately and efficiently, as well as to prevent damage in the first place. Even more importantly, submarine cable operators ensure implementation of features in the design, development, landing, and operation of their cables to minimize disruption to communications traffic in the event that unavoidable damage occurs.

The Coalition thus agrees that submarine cables are integral to global communications and is committed to safeguarding these cables. As industry participants with deep technical and business knowledge of submarine cables, the Coalition has been advocating for requirements that further this goal without detracting valuable time and resources from the actual operation and repair of cables.³ The Coalition urges the Commission to reconsider certain aspects of the *Outage Order* to ensure that the outage reporting rules are grounded in solid technical analysis and fully take into consideration the costs that will be incurred by the industry in complying with the rules, consistent with the Paperwork Reduction Act (“PRA”)⁴ and Executive Order 13563.⁵

² *Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data*, GN Docket 15-206, Notice of Proposed Rulemaking, 30 FCC Rcd 10492 (2015) (“*NPRM*”); *see e.g.*, Comments of AT&T Services Inc. at 5, GN Docket 15-206 (filed Dec. 3, 2015) (“*AT&T Comments*”).

³ *See* Joint Comments of Submarine Cable Coalition, GN Docket No. 15-206 (filed Dec. 3, 2015) (“*Joint Comments*”); Joint Reply Comments of Submarine Cable Coalition, GN Docket No. 15-206 (filed Dec. 18, 2015) (“*Joint Reply Comments*”).

⁴ 44 U.S.C. §§ 3501–3521.

II. THE COMMISSION’S DEFINITION OF “OUTAGE” IS TOO BROAD

In the *Outage Order*, the Commission adopts a definition of “outage” that ignores the realities of submarine cable operations and sweeps too broadly. The result is a reporting requirement that imposes a significant and unnecessary burden on submarine cable providers and may not provide the Commission with the situational awareness that it desires. The Coalition urges the Commission to reassess how outages are defined based on the substantial feedback already provided by the industry.

a. The 30-Minute Standard for Lack of Connectivity is Arbitrary.

The Commission’s first definition of a reportable outage is based on lack of “connectivity.” A provider must report when there is an outage on “a portion of a submarine cable system between [submarine line terminal equipment (SLTE)] at one end of the system and SLTE at another end of the system for more than 30 minutes.”⁶ This definition will trigger reports of not only total cable disruptions, but also mundane, everyday events that do not have a discernable impact on communications traffic. Requiring that submarine cable providers report all such events is both unreasonably costly to providers and ultimately unhelpful to the Commission.

Industry participants in the *NPRM* were vocal about the need to properly define connectivity.⁷ The Commission claims to have responded to industry guidance, in particular that of the Coalition. Yet the Commission’s final rules deviate sharply from the Coalition’s proposal. The Coalition proposed that an outage be defined as a disruption of traffic on 50 percent or more

⁵ Executive Order No. 13,563, 76 Fed. Reg. 3821 (January 18, 2011) (“Executive Order 13563”).

⁶ *Outage Order* at ¶27.

⁷ See, e.g., Comments of North American Submarine Cable Association (“NASCA”), GN Docket 15-206 (filed Dec. 3, 2015) (“NASCA Comments”) at 9-13; Joint Comments at 2-4; AT&T Comments at 13-15; *Ex Parte* Letter from Latam Telecommunications, GN Docket No. 15-206 at 2 (filed Feb. 1, 2016); Reply Comments of Verizon, GN Docket No. 15-206 (filed Dec. 18, 2015) (“Verizon Comments”) at 2.

of the fiber pairs of a cable system, lasting more than three hours.⁸ This proposal, along with similar recommendations of other experienced commenters made during the rulemaking process, was based on years of experience in the operation and maintenance of undersea networks and calibrated to capture specifically those outages that have an actual and substantial effect on communications traffic. The Coalition’s proposal ensured that personnel at the applicable cable stations or network operations centers (“NOC”) would have a reasonable amount of time to try to resolve the situation (*i.e.*, three hours) and that communications would be severed for a meaningful interval before becoming reportable. To decrease the recommended time frame by over 70 percent while also disregarding whether the outage has a significant impact on traffic entirely departs from FCC’s purported goal of collecting information on service disruptions that could affect homeland security, public health or safety, and the economic well-being of our nation.⁹

As Commissioner O’Rielly observes in his dissent, the FCC has simply chosen its own time frame with little analysis of why it is more appropriate than what is suggested by the record.¹⁰ In the *NPRM*, the FCC originally proposed defining an “outage” as a 30-minute connectivity disruption, even if the loss in connectivity has no effect on traffic or materially affected communications.¹¹ The rule ultimately adopted by the Commission holds to this original 30-minute timeframe without much additional discussion, and is neither grounded in facts nor backed by experienced reasoning. Thirty minutes is a number “pulled out of thin air” without any meaningful analysis.

⁸ Joint Comments at 3.

⁹ *Outage Order* at ¶12.

¹⁰ Dissenting Statement of Commissioner Michael O’Rielly, *Outage Order* at p. 59 (“O’Rielly Statement”).

¹¹ *NPRM* at ¶31.

In justifying its approach, the Commission merely states that it “believe[s] 30 minutes, not three hours, is an appropriate timeframe to trigger a reporting obligation for such failures because damage or repair to facilities between the SLTE likely indicates a long-term problem that will not be cleared quickly, so there is no benefit to further delaying reporting.”¹² However, there is no record evidence that a 30-minute outage would necessarily result into a long-term problem. And such a technical conclusion would be incorrect. A prime example of this is a shunt fault, which is a fairly routine situation and occurs when the insulating material around a cable becomes damaged, resulting in direct seawater contact with the metallic cable core.¹³ These faults almost always last more than 30 minutes, but can be resolved in a little as one hour by shutting down and rebalancing the Power Feed Equipment (“PFE”) on land. If a shunt fault were to develop into a major outage actually disrupting communications for a meaningful amount of time, it would be captured by the four-hour backstop in the *Outage Order*. However, under the *Outage Order*, a submarine cable operator would be required to dedicate valuable time and resources preparing an initial report for a simple shunt fault that can be resolved quickly, rather than investigating the issue and rebalancing the PFE.

The Coalition urges the FCC to (i) increase the period of time that a connectivity outage need exist before reporting is required in order to allow operators to focus first on resolving an outage, rather than dedicating valuable resources for complying with an administrative report; and (ii) define connectivity appropriately to include only outages that have a meaningful impact on traffic over a submarine cable facility, and to exclude everyday situations where neither customers nor national security are affected.

¹² *Id.* at ¶27.

¹³ Shunt faults can be caused by ship anchors, fishing activity, marine currents, marine wildlife, etc., and many times do not affect service for prolonged periods of time.

b. The Commission's Definition of Outage Affecting Capacity Will Lead to Hundreds of Unnecessary Reports.

The Commission has also adopted an unrealistic metric for outages affecting “capacity.” Here, the Commission intends to create a “backstop” to capture events that may not be reportable until a greater period of time elapses. However, in doing so, the Commission requires that submarine cable providers report failures or significant degradations of *any* fiber pair on a cable segment that last four hours or more—even if the traffic is successfully rerouted or the “outage” is the result of planned maintenance that does not affect end-user communications.¹⁴ The Commission’s expansive definition could lead to multiple reports per year for each one of the 42 FCC-licensed submarine systems with active capacity as of December 13, 2014,¹⁵ as well as the 9 new systems that have been licensed or applied for licenses since then, ultimately resulting in hundreds of reports where there may be no diminution or disruption in communications traffic.

The new rule requires the reporting for both unplanned and planned outages. However, there is no reason why submarine cable operators should incur thousands of dollars in costs to report planned outages, which are a routine and necessary part of submarine cable maintenance and already accounted for in wholesale customer agreements. Multiple submarine cable operators already notify customers (including national security agencies running traffic over a provider’s cable) well in advance of routine maintenance. Providing an additional report to the Commission is superfluous and provides no additional meaningful intelligence for use by anyone.

In addition, under this definition, issues that have little impact on cable connectivity, let alone actual communications, would trigger the three-step reporting obligation. For instance, a

¹⁴ *Outage Order* at ¶28.

¹⁵ *See FY 2015 Regulatory Fees Submarine Cable Systems*, Public Notice (rel. Sept. 14, 2015).

provider who may have up to 200 SLTE line cards¹⁶ on a fiber pair would be required to prepare reports if only *one* card fails, despite there possibly being no discernible impact on the cable.¹⁷ As described in further detail below, the Coalition estimates that one such event could cost the provider at least \$1,500 (excluding any legal fees) to prepare the three reports mandated by the *Outage Order*. Yet the reports would provide little, if any, useful information to the FCC.

Finally, the Commission should also reevaluate requirements that deem outages reportable even when traffic is rerouted. While the Commission has used Part 4 rules as a baseline for some portions of the *Outage Order*, it has ignored well-established precedent for not requiring reporting when rerouting prevents an outage from affecting the public.¹⁸ In keeping with the Commission's goals to foster innovation, such treatment of rerouted traffic when determining reportable outages incentivizes the submarine cable industry to design and develop the most efficient, reliable, and redundant systems. Indeed, common sense dictates that a submarine cable provider should not be required to expend funds and resources reporting an "outage" that has no effect on traffic viability, particularly when the provider has already invested in ensuring that such "outages" have no meaningful effect on its customers or the nation's security.

¹⁶ The line card is a wave division multiplexer which transmits and receives specific wavelength frequencies. If the line card fails the wave fails.

¹⁷ When a line card fails the wave frequency will not be sent or received and therefore that wave will fail and no traffic will be carried on that wavelength for that fiber pair until the line card is repaired or replaced.

¹⁸ See 47 C.F.R. § 4.5(e)(1) (PSAP connectivity outage does not occur if a "reroute for all end users was available"); New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830 ¶ 80 (2004) (noting that redundancy can "prevent the occurrences of outages"); Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Notice of Proposed Rulemaking, Second Report and Order and Order on Reconsideration, 30 FCC Rcd 3206, ¶¶ 24-30 (acknowledging that simplex events in which "traffic is diverted to a back-up circuit" should not be treated as reportable outages within the duration of a maintenance window).

III. THE COMMISSION ERRED IN ITS COST-BENEFIT ANALYSIS

In the *Outage Order*, the Commission concludes that the benefits of the outage reporting requirements outweigh the associated costs to providers. This conclusion, however, is based on inaccurate information and faulty logic: in calculating the costs of compliance, the Commission used numbers that were either inapplicable or simply wrong. Similarly, the Commission alleges that the *Outage Order* yields public interest benefits but provides no support for such statements. Finally, the Commission's expansive definition of "outage" will add considerably to the FCC's own workload and cause an increase in costs that will eventually be passed on to submarine cable licensees. The Coalition implores the Commission to revisit its cost-benefit analysis to make it a better reflection of reality.

a. The Commission Greatly Underestimates the Time and Fees Involved in Complying with the Rules

Even ignoring the costs arising from the Commission's improper definition of an outage, the *Outage Order* makes a number of other fatal errors in determining that the new reporting requirements will cost the industry \$152,000 annually.¹⁹ These errors are outlined by Commissioner Ajit Pai in his dissent, and include: (i) using the wrong number of licensees by a magnitude of at least 2.6; (ii) arbitrarily assigning a 50-hour annual burden per licensee for compliance with the *Outage Order*; and (iii) arbitrarily assuming a labor cost of \$50 per hour.²⁰ All of these numbers—of licensees, annual burden, and labor cost—are derived from either incorrect or irrelevant information.

With respect to the time burdens on the industry, the Commission concludes that each licensee will be subjected to a 50-hour annual burden by looking at costs associated with UCIS

¹⁹ *Outage Order* at ¶81-88.

²⁰ Dissenting Statement of Commissioner Ajit Pai, *Outage Order* at p. 55.

reporting in 2008 and adding an arbitrary 25% inflator.²¹ There is absolutely no justification for using a report that bears no resemblance to the rules adopted by the Commission in 2016. The reporting regime in 2008 that forms a basis for the Commission’s estimate utilized a far narrower definition of outage. Thus, the 2008 regime required less “outages” to be reported. Furthermore, the 2008 regime never required a single formal report to be produced.²² Here, submarine cable providers are required to provide *three* distinct formal reports for each incident.

The Coalition also disagrees with the Commission’s original estimate that a submarine cable provider would likely spend two hours generating three outage reports.²³ Given realities of the submarine cable industry, where (i) many cables are co-owned by multiple licensees, requiring coordination and communication among consortium members; (ii) reporting personnel are often located in foreign locations and may need to coordinate with counsel in the United States; and (iii) reporting personnel may have language barriers, the Coalition conservatively estimates that the time burden to complete *each* of the three reports required by the *Outage Order* for every single incident would be two hours – that is six total hours for each outage requiring three reports. In summary, the Commission’s reasoning to justify the time burdens to comply with the new rules, is entirely without basis.

As to the costs of compliance, the Commission fails to address many of the cost-related concerns raised by multiple commenters in response to the *NPRM*. For example, NASCA urged the Commission to account for costs such as reviewing and understanding requirements;

²¹ The Commission previously estimated that there would be approximately 40 hours spent per licensee on annual restoration or trouble reports that would warrant a filing in UCIS, based on information collected in 2008. See OMB Control Number 3060-1116, ICR Reference No. 201409-3060-017, FCC Supporting Statement at 8 (2014) (“2014 Statement”); *Outage Order* at ¶12, 87.

²² 2014 Statement at 1.

²³ *NPRM* at ¶44.

implementing technology and procedures; and related training expenses.²⁴ All of these expenses, plus other substantial costs such as employee benefits and payroll taxes, should be factored into a determination of labor costs. The *Outage Order* does acknowledge that NASCA specifically objected to the Commission's proposed \$80/hour labor rate in the *NPRM* as too low in light of industry experience.²⁵ Yet in the *Outage Order*, the Commission not only disregards NASCA's concerns, it instead and without any meaningful analysis or justification *lowers* this figure to \$50/hour. This is simply inexcusable and yet another example of an arbitrary and capricious decision.

The Coalition estimates that labor costs could be as high as \$250/hour for the highly skilled engineers who typically monitor submarine cables (including overhead, employee benefits, payroll taxes, training costs, communications equipment, etc.). Compliance with the *Outage Order* thus results in a minimum cost of \$1,500 for a single outage (*i.e.*, three reports x two man-/hours x \$250 per hour. These figures, derived from significant industry experience, do not even take into account (i) upfront costs associated with understanding and setting up a program for complying with the *Outage Order* (discussed in more detail below); or (ii) fees incurred by obtaining the assistance of specialized legal counsel (typically in the costly Washington, D.C., market). As Commissioner O'Rielly notes in his separate statement on the *NPRM*, there are not many Washington, D.C., lawyers who charge \$80 per hour, as proposed by the Commission.²⁶

²⁴ NASCA Comments at 23-28.

²⁵ *Id.* at 28.

²⁶ Statement of Commissioner O'Rielly, *NPRM*, 30 FCC Rcd 10492 at 10562.

In its analysis, the Commission notes that many industry comments discussing costs were ultimately dismissed because they were presumably submitted in response to the initial proposal, which has since been “revised or clarified in an effort to reduce burdens in response to the record.”²⁷ Yet the Commission fails to address how these revisions specifically reduce costs, instead merely claiming that they do. For example, the Commission notes that it has extended reporting time frames, clarified that reports are due from the time the event is determined to be reportable, and allowed for best estimate reporting in many areas. But providing a longer time frame to report an outage and greater flexibility as to its content does not solve industry concerns regarding the financial burden of compliance, particularly in cases where the outage itself should not actually be reported, as in the case when traffic is rerouted or when the “outage” does not otherwise meaningfully affect communications traffic.

b. The Commission’s Errors Are Costly and Inconsistent with the Paperwork Reduction Act and Executive Order 13563.

The new regime fails to satisfy the PRA, which requires that rules pertaining to any new information collection “necessary for the proper performance of the agency’s functions” be “the least burdensome” means possible.²⁸ First, the *Outage Order* is clearly not the least burdensome method for achieving the Commission’s goals to facilitate the reliability and resiliency of submarine cable operations. Second, while the Coalition understands why the Commission may take an interest in reviewing and assessing fatal cable outages, the way the *Outage Order* defines outage will inevitably result in a substantial volume of costly and meaningless reports with no benefit to the actual performance or operation of cables.

The PRA lists six different factors to be taken into account when assessing burden: (i)

²⁷ *Id.* at ¶86.

²⁸ 5 C.F.R. § 1320.5(d)(1)(i).

time and resources expended with respect to the review of instructions; (ii) the acquisition and implementation of technology and systems; (iii) the adjustment of existing procedures for compliance; (iv) the searching of data sources; (v) the collection and review of information; and (vi) the actual transmission of information.²⁹ In the *NPRM*, the Commission failed completely to consider at least four of the six elements completely.³⁰ Commissioner O’Rielly labeled the Commission’s analysis in this regard “woeful” and lacking in credibility.³¹

The Commission failed to rectify its omission in the *Outage Order*. Despite acknowledging that there are “additional costs” beyond the *NPRM*’s estimate, the Commission continues to ignore the remaining PRA factors.³² Instead, the Commission asserts that any additional costs are “not a result of the [*NPRM*] failing to account for costs,” but rather from commenters failing to provide concrete estimates.³³ All of the recurring costs described above that arise from the Commission’s overly-expansive definition of an outage are necessary inputs for a proper PRA analysis. The Commission also fails to account for other upfront costs, such as implementing new technology to comply with outage reporting requirements; hiring new personnel and associated employee benefits and payroll taxes; retaining the assistance of consultants and lawyers to ensure compliance in the early stages; and the time and financial costs of organizing between consortium members. The FCC simply assigns a value of \$0 to these upfront costs.

Additionally, the *Outage Order* is inconsistent with Executive Order 13563 which requires agencies to, among other things, reasonably determine that a regulation’s benefits justify

²⁹ 44 U.S.C. § 3501(2). *See also* 5 C.F.R. § 1320.3(b)(1).

³⁰ *NPRM* at ¶ 44.

³¹ *Id.* at 10,526.

³² *Outage Order* at ¶84.

³³ *Id.*

its costs; tailor regulations to impose the least burden on society; select a regulatory approach maximizing net benefits; specify performance objectives; and identify and assess available alternatives to direct regulation.³⁴ The *Outage Order* levies substantial burden on submarine cable operators, including significant upfront and recurring financial costs that have not been properly analyzed by the Commission. In addition, as part of its analysis, the FCC failed to identify less costly alternatives to the new regulations. As discussed in greater detail below, the burdens and costs of compliance are not outweighed by the benefits of the *Outage Order*. The Coalition urges the Commission to reconsider the cost-benefit analysis in the *Outage Order* in satisfaction of both the PRA and Executive Order 13563.

c. The Commission Has Failed to Show the Benefits of the Reporting Requirements.

The *Outage Order* touts substantial public benefits justifying the costs to providers, but this conclusion is similarly unfounded. As the record in this proceeding made clear, the *Outage Order* was issued in light of a typhoon-induced submarine cable outage in the Commonwealth of the Northern Mariana Islands (“CNMI”), which the Commission labeled “a critical example of the limitations of the present system and the need for the changes in outage reporting.”³⁵ Yet, as Commissioner O’Rielly points out in his dissent, the CNMI incident was distinct, if not wholly unique, due to the lack of redundancy—and therefore connectivity—in the area. In fact, a cable operator is now in the process of laying a new submarine cable connecting the CNMI to Guam with a specific eye on ensuring redundancy.³⁶ Once completed, it is unlikely that the CNMI could ever again face the level of outages caused by the July 2015 typhoon, with or without additional reporting requirements. Unlike the anomalous situation in the CNMI, most cable

³⁴ Executive Order 13563, at Section 1(b).

³⁵ *Id.* at ¶6.

³⁶ O’Rielly Statement at p. 58.

routes (particularly in the trans-Atlantic, trans-Pacific and U.S.-South America routes) are served by multiple competing submarine cable systems. The Commission should not use the outlying situation of the CNMI in 2015 as its basis to impose overly burdensome reporting obligations on other routes.

As multiple industry participants have noted, the types of outages that prompted the Commission to initiate this proceeding are rare events.³⁷ The other categories of outages deemed reportable under the *Outage Order* generally already have safeguards implemented, such as traffic rerouting, or have little if any impact on the public (e.g., scheduled maintenance windows). Because compliance with the *Outage Order* diverts valuable time and resources away from the actual repair process, the requirements may actually impede one of the goals of the Commission, which is to enable adequate and efficient repair of submarine cable communications, particularly in emergency situations.

Indeed, the act of reporting an outage to the Commission does nothing to further the public interest. Continuous maintenance, diversity, and traffic rerouting, as currently implemented by submarine cable operators, already make the Commission's goal of network reliability a reality for almost all systems, without onerous reporting requirements in the event of even minor "outages" where there are no real impacts on service.

d. The New Outage Reporting Obligations Will Likely Increase Annual Regulatory Fees for Licensees.

As discussed above, the Commission has grossly underestimated the number of reportable incidents that will arise from implementing the *Outage Order* as a result of its over-inclusive designation of an outage and the associated costs and administrative burdens on submarine cable providers. The Commission's overly broad definition of "outage" will lead to

³⁷ AT&T Comments at 5-6; NASCA Comments at 3-6; Verizon Comments at 1.

the submission of hundreds of reports each year, which may result in the Commission adding full-time employees to its International Bureau to review and process the largely meaningless reports. The costs associated with hiring new FCC staff to review these additional and unnecessary reports will most likely be passed on to the licensees in the form of increased annual regulatory fees. As several members of the Coalition have repeatedly noted in the Commission's regulatory fee proceedings,³⁸ submarine cable licensees are already required to pay regulatory fees that are not commensurate with the oversight provided by the Commission. Additional, unjustified increases in regulatory fees will only discourage investment in U.S. submarine cables.

IV. THE SIX-MONTH IMPLEMENTATION PERIOD IS INSUFFICIENT

The *Outage Order* provides for an implementation period of just six months to “allow those providers who did not previously report such outages to develop processes for doing so.”³⁹ None of the commenters to the *NPRM* proposed a six-month implementation period and none provide a basis for the Commission's adoption of one. To the contrary, multiple commenters proposed and supported a period of 12 to 15 months.⁴⁰ The Commission completely ignores this feedback and attempts to justify a six-month implementation period as sufficient because “of the significant adjustments to the proposed rules to add in flexibility and clarify responsibilities.”⁴¹ The Commission fails to recognize, however, that commenters who recommended a period of 12-15 months did so *in addition* to explaining the need for greater flexibility and clarification of

³⁸ See, e.g., Comments of the Submarine Cable Coalition, Assessment and Collection of Regulatory Fees for Fiscal Year 2016, MD Docket No. 16-166 (filed Jun. 20, 2016); Comments of the Submarine Cable Coalition, Assessment and Collection of Regulatory Fees for Fiscal Year 2015, MD Docket No. 15-12; Assessment and Collection of Regulatory Fees for Fiscal Year 2014, MD Docket No. 14-92 (filed Jun. 22, 2015); Comments of the International Carrier Coalition, Assessment and Collection of Regulatory Fees for Fiscal Year 2013, MD Docket No. 13-140 (filed Jun. 19, 2013).

³⁹ *Outage Order* at ¶77.

⁴⁰ See, e.g., NASCA Comments at 35; AT&T Comments at 12; Joint Reply Comments at 6; Verizon Comments at 5.

⁴¹ *Outage Order* at ¶77.

responsibilities. In proposing 12-15 months, these industry participants—who have the greatest understanding of the technological and administrative burdens associated with complying with the *Outage Order*—took into consideration that the proposed rules, initially rigid and vague, would be adjusted prior to implementation. Conversely, the Commission gives no rationale for its proposed six-month implementation period. As Commissioner O’Rielly pointed out, this number is entirely arbitrary and another example of the FCC’s rush to implement rules when there is no real need for them.⁴²

Six months is an insufficient amount of time for submarine cable providers to understand, develop, and implement procedures complying with the complex requirements promulgated by the *Outage Order*. As explained by multiple commenters, submarine cable systems are operated in a manner posing numerous impediments to expedient compliance.⁴³ For one, many systems are not owned by one provider, but by multiple operators in a consortium. Moreover, in several systems, the NOC functions may be outsourced, requiring further coordination with the NOC provider. Coordinating technology and procedures between varying operators in a consortium and among consortium members and outside vendors in a sixth-month period is simply unfeasible. Second, many systems are older and do not currently have the capability to detect outages on every part of a cable, as required by the *Outage Order*. These systems will need to incorporate new technology to be compliant with the *Outage Order*, which cannot realistically be completed within a year, let alone six months.

Maintaining this unjustified implementation period is likely to lead to a wave of extension or waiver requests by submarine cable providers who are legitimately unable to

⁴² O’Rielly Statement at 59.

⁴³ See, e.g., *Ex Parte* Presentation of the North American Submarine Cable Association, GN Docket 15-206 (filed Jun. 17, 2016).

comply with the Commission's rules in such a compressed timeframe. The Coalition urges the Commission to reconsider its six-month implementation deadline to effectively account for the realities in the submarine cable industry and to avoid a tsunami of extension requests.

V. CONCLUSION

The Coalition requests that the Commission reconsider and clarify the *Outage Order*, in accordance with the recommendations herein, at the earliest possible date.

Respectfully submitted,

/s/ Ulises R. Pin
Andrew D. Lipman
Ulises R. Pin
Catherine Kuersten
Morgan, Lewis & Bockius LLP
2020 K Street, N.W.
Washington, DC 20006
Tel. (202) 373-6000
Fax (202) 373-6001
andrew.lipman@morganlewis.com
ulises.pin@morganlewis.com
catherine.kuersten@morganlewis.com

Counsel for the Submarine Cable Coalition

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